

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOSHUA SHELBY, #N4073

PETITIONER

VERSUS

CIVIL ACTION NO. 1:11-cv-242-HSO-JMR

RONALD KIND

RESPONDENT

**ORDER OVERRULING PETITIONER'S OBJECTIONS, ADOPTING
REPORT AND RECOMMENDATIONS, AND DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on Petitioner Joshua Shelby's Objections [16], [17], [19], to Chief Magistrate Judge John M. Roper's Report and Recommendations [15]. Judge Roper reviewed Respondent Ronald King's Motion to Dismiss [11] and related pleadings. Judge Roper recommended that the Motion [11] be granted, and that Petitioner's Petition [1] be dismissed as time-barred, pursuant to 28 U.S.C. § 2244(d)(1). *See* Report and Recommendations, at p. 4.

I. DISCUSSION

Because Petitioner has filed Objections to the Magistrate's proposed findings and recommendations, the Court applies a *de novo* standard of review to those proposed findings and recommendations to which an objection is made. 28 U.S.C. § 636(b)(1); Rule 8(b) of RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS. Based on this review, the Court finds that the Magistrate Judge's Report and Recommendations are well reasoned, and they correctly find the applicable facts and apply the governing legal standards. As discussed in more detail below, the Court will therefore overrule Petitioner's Objections, and adopt the Magistrate Judge's Report and Recommendations as the

opinion of this Court.

Petitioner essentially argues that the limitation period of § 2244(d) is unconstitutional, as it “infringes on, and indirectly, or directly denies the writ of habeas corpus.” Objs. [16], at p. 5. He cites Article I, Section 9, of the United States Constitution and *Marbury v. Madison*, 1 Cranch 137 (U.S. 1803), and argues that Congress has gone beyond the express limits or boundaries of its power. *Id.* at pp. 2–5. Petitioner previously advanced this argument in his Response to Respondent’s Motion to Dismiss. Resp. [12], at pp. 3–7.

The Court is not persuaded by Petitioner’s constitutional arguments. The Fifth Circuit has held that the Antiterrorism and Effective Death Penalty Act’s limitation period does not unconstitutionally suspend the writ in violation of the Suspension Clause, art. 1, § 9, cl. 2, absent a showing by a petitioner that the limitation period has made the habeas remedy inadequate or ineffective for him. *Molo v. Johnson*, 207 F.3d 773, 775 (5th Cir. 2000); *Turner v. Johnson*, 177 F.3d 390, 392–93 (5th Cir. 1999); *see also Felker v. Turpin*, 518 U.S. 651, 664 (1996) (holding that the Antiterrorism and Effective Death Penalty Act’s restrictions on second habeas petitions do not suspend the writ of habeas corpus in violation of Article I, § 9, clause 2, of the Constitution). Petitioner can make no such showing here. Therefore, the Magistrate Judge correctly found that no relief is available to Petitioner under § 2254 because his claim is time-barred, pursuant to 28 U.S.C. § 2244(d)(1).

II. CONCLUSION

After thoroughly reviewing Ronald King's Motion to Dismiss [11], the Petition, and related pleadings, as well as the findings in the Report and Recommendations, Petitioner's Objections, and the record as a whole, the Court finds that Petitioner's Objections are not well taken and should be overruled. The Court further finds that the Magistrate's Report and Recommendations [15] should be adopted as the finding of the Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Petitioner Joshua Shelby's Objections [16], [17], [19], filed in this cause are **OVERRULED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Report and Recommendations [15] of Chief Magistrate Judge John M. Roper, entered on November 28, 2011, should be, and hereby are, adopted in their entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Respondent Ronald King's Motion to Dismiss [11] is **GRANTED**, and the [1] Petition for Writ of Habeas Corpus filed by Petitioner Joshua Shelby pursuant to 28 U.S.C. § 2254 is **DISMISSED WITH PREJUDICE**. A separate judgment will be entered in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 27th day of April, 2012.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE